

Nebraska Legislature 104th Legislature, 1st Regular Session

Appropriations Committee Hearing

Remarks by Chief Justice Michael G. Heavican

March 10, 2015

Good afternoon Chairman Mello and members of the Appropriations Committee. My name is Mike Heavican. I am Chief Justice of the Nebraska Supreme Court and here to testify on the Committee's preliminary recommendation for both the next biennium and for deficit appropriations.

Let me begin by noting that recent legislative initiatives have resulted in the budget request before you, specifically the addition of the Office of Public Guardian, major changes reforming juvenile justice, and additional services for adult offenders.

To illustrate this growth, services to adults and juveniles now make up over 30% of the total Judicial Branch General Fund budget. Two years ago, none of it was in our budget. However, our budget and deficit requests were submitted at levels sufficient to meet the challenges of implementing these initiatives.

You will hear me say several times today that it is imperative that the judicial branch have adequate resources to take on the responsibilities we have recently been given by the Legislature. This includes having a workforce that is compensated fairly for all it has been asked to do.

The packet you received begins with a list of budget issues that I am requesting be fully funded by the Committee. I will highlight the top five requests, but will speak to each item on the list.

1) The first two issues on the list, and our top priorities, are entitled 'Base Appropriation Adjustment' and 'NCSC Salary Survey.' Please note these issues do not include salary increases for judges, they only involve judicial branch employees. The Base Appropriation Adjustment is for approximately \$4.5 million each year of the next biennium. The NCSC Salary Survey request is for \$1,660,573 in FY15-16 and \$1,702,087 in FY16-17.

As you know, for several years the Appropriations Committee has heard testimony about low salaries in the judicial branch, as well as examples such as employees moving from court positions to county jobs because of higher salaries. As a result, and based upon your suggestion, the Supreme Court conducted a salary survey which was completed by the National Center for State Courts in December 2013.

Last year's LB 905 increased our personal services limitation (or PSL) this fiscal year to start implementing the survey. This resulted in the Supreme Court being able to put into effect approximately 75% of the salary survey recommendations. The Base Adjustment issue is

intended to sustain the salary increases given last August. The NCSC Salary Survey issue is intended to fully implement the remaining recommendations of the survey.

The salary increases given last year, although a significant step forward, did not solve all the problems. The salary survey made comparisons between Nebraska and most surrounding states, as well as comparisons between the State and several Nebraska counties. Disparities between Nebraska and surrounding states still exist when a beginning Probation Officer salary of \$33,209 is still about 20% lower than states such as Wyoming's \$41,448 and Iowa's \$40,810.

As I previously mentioned, disparity between county and state positions still exist, especially in urban areas where, depending on the position, a Supreme Court employee's salary can be from 15% to more than 30% lower than comparable county employee positions. For example, the starting salary for the Judicial Administrator position in Douglas County, which oversees the County Court and supervises approximately 75 employees, is \$69,040, compared to the \$100,955 starting salary for the Douglas County Clerk of the District Court, a county position which supervises approximately 50 employees.

The duties and responsibilities for Court and probation employees have increased in recent years and those employees should receive fair compensation as a consequence. In addition, the salary survey has shown us that it is essential to have salaries that are competitive -- not only to enhance recruitment, but also to increase employee retention and productivity. Therefore, we request these issues be fully funded to prevent falling even further behind.

2) The next request is Adult Voucher Funding, which you have asked us to discuss. Probation currently uses the Probation Program Cash Fund to provide substance abuse treatment and other programs. Revenue to the Cash Fund comes primarily from a supervision fee paid by probationers and problem-solving court participants as well as payments from the Department of Correctional Services. Payments come from Corrections because parolees are also eligible to use Probation services and programs such as reporting centers. The problem is that parolee expenditures far exceed the revenue from Corrections. As a result, the balance in the Cash Fund is declining rapidly and is estimated to no longer be viable as early as FY16-17, and the Appropriations Committee has asked how we could allow this to happen.

First, it has been a goal of this fund to provide services and programs to as many as possible within the criminal justice system. This goal grew out of guidance from the Community Corrections Council, a group consisting of representatives of all three branches of government, in an effort to build programs to reduce the number of people going to prison.

It has been noted by the Auditor's office that the balance in this cash fund has been too high. Probation has intentionally been reducing the fund balance over several years. Allowing parolees to use Probation services was one way to accomplish that.

Finally, it has only been within the last two fiscal years that parolee expenses significantly increased, up to six times more than revenue. Previously, although expenses were greater than revenue, the difference was within manageable limits. However, this trend cannot continue. If

the Appropriations Committee does not fund this budget issue, services will no longer be available to parolees.

3) We request an increase in PSL of approximately \$360,000 each fiscal year for our Court Improvement Project. This Project is a federally funded program intended to improve the outcomes of children affected by the court system. We have received funding for this program for close to 20 years. Until this fiscal year, the Supreme Court contracted with the University of Nebraska, Lincoln, Center for Children, Families and the Law to implement this program. Please note that Nebraska is the only state that contracts with another entity. Every other state houses this program within the court system.

It is my understanding that the Committee requested that we discuss why we no longer wish to contract with UNL, but instead bring this program directly under the oversight of the State Court Administrator. There are two reasons.

First, the long-time Director of the project has moved to another state, which provided an opportunity to evaluate the effectiveness of the program. That evaluation showed several areas where efficiency could be improved if the Project moved under the judicial branch. Second, there will be opportunities to redirect or reduce expenditures. For example, the University currently charges 10% as an overhead cost, or approximately \$110,000 over the next biennium. However, the Project will not incur this expense if it is under the judicial branch. Again, this request is to increase PSL only, no additional appropriation is requested.

4) Our next request is for approximately \$1.2 million each year of the biennium for Probation Information Technology. Probation and probation-based problem-solving courts have done a wonderful job of developing computer systems primarily from the Crime Commission's Uniform Data Fund and a mix of other funding. However, because of reduced funding from the Crime Commission and recent legislation increasing the duties and responsibilities of Probation, this funding method is no longer sustainable.

In addition, the justice reinvestment initiative, led by the Council of State Governments and intended to reduce the need for new prison facilities, will increase the technology needs of Probation. It will be essential to have computer systems that fully support probation officers in the field, for example mobile technology that would allow probation officers to record field notes on a tablet rather than returning to the office to input data.

Even more important to justice reinvestment is our goal of full integration of Probation's computer systems with the court case management system, known as JUSTICE. This will allow more information to be shared between judges and court and probation staff, ultimately improving supervision of offenders. Therefore, we again, request full funding of this issue.

This ends the funding requests I particularly wanted to highlight. I would like to now turn to our additional requests, starting with the Crossover Youth Project.

The Crossover Youth Project request for \$100,000 each year is intended to reduce the number of youth who are involved in both the child welfare and juvenile justice systems. It uses a model

developed by Georgetown University's Center for Juvenile Justice Reform that has shown positive results in Douglas County. The Project is also starting its second year in Dodge, Gage, and Lancaster counties. Funding this request will continue the progress that has been made with expansion into Sarpy County next year.

As I have mentioned in past State of the Judiciary addresses, interpreter services continues to be a challenge for the courts and increasingly for Probation. Overall there has been a 5% increase in the number of interpreter assignments from last year, and a more than 100% increase in Probation usage. Our request of \$350,000 each year of the biennium would fund a much needed administrative position to coordinate interpreter activities. Funds would also be provided to enhance interpreter education and meet the growing demand for non-Spanish language interpreters.

The additional \$150,000 request would provide a small increase in the hourly rates paid to interpreters used by the courts and Probation. Interpreters are independent contractors and this increase will be given to interpreters contingent upon full funding by the Legislature of this separate request.

Our last request concerns Judicial Branch Education, or JBE, and is for \$250,000 General Funds. JBE is primarily funded through a court fee that is deposited in a cash fund. However, revenue to the cash fund has been declining and JBE's use of grants to fund education is not a long-term funding strategy. The demand for training in the judicial branch has expanded tremendously due to the additional responsibilities that have been given to the judicial branch.

In conclusion of this portion of my remarks, I do have one technical request. The preliminary recommendation related to health insurance is too low. Estimated health insurance expenditures for the current fiscal year are used by the Fiscal Office to calculate this increase. However, in several budget programs, using the current fiscal year was not an accurate means of calculating the increase. The result is a preliminary recommendation that is short in those programs. Therefore, I am requesting an additional \$565,760 for FY15-16 and \$741,191 for FY16-17 to fund the health insurance increase.

Now I would like to address our deficit request in juvenile services. A letter dated February 19, 2015, was sent to each of you requesting that \$11 million be added to this fiscal year's appropriation for juvenile services.

Let me review with you the reasons for this request. The most significant factor is lack of access to Federal Funds, such as Medicaid and Title IV-E, which accounts for an estimated \$7,269,200 of the total request. When supervision of juveniles transferred from the Department of Health and Human Services (DHHS) to Probation through LB 561, we were informed by DHHS that the Federal funds juveniles were already receiving would be available, just as it had been for DHHS. We were informed we would not have to rely solely on General Funds. That information was wrong as Federal funds have not transitioned nor been made available to Probation.

Although many juveniles are Medicaid eligible, Magellan Health Care, the company with whom DHHS contracts to administer Medicaid benefits, is approving payments for less than half -- or

approximately 45% of those eligible. Note that Probation is now serving juveniles that are not only denied Medicaid access, but have high service needs, needs that tend to be more costly. This is a population of juveniles that was not under Probation's supervision during the pilot project that eventually resulted in the transfer from DHHS. Cost data on which to build projections for this population were not available when the transfer occurred. Any increase in the percentage of those eligible would greatly reduce General Fund expenditures.

Rate increases and increased expenditures resulting from broadening Probation's statutory obligations, totaling an estimated \$3,195,200, are the second factor. Initial funding was meant to finance services at the same rates that DHHS paid. However, Probation is paying higher rates for some services, such as the foster care rate determined by the Legislature last year and, in particular, for use of county detention facilities. For example, \$236 per youth per day was the projected detention rate. Actual rates have been \$272 per youth per day, with over \$4.2 million paid for detention in just the first half of this fiscal year.

The remaining \$535,600 deficit amount is due to other factors, such as unanticipated expenses for youth using the Hastings Juvenile Chemical Dependency Program and terms of probation for many juveniles that are longer than estimated. In addition, some of the largest counties have accelerated implementation of LB 464, which was intended to be phased in over several years. The objective of LB 464 is to have juveniles brought to juvenile court where they can receive age appropriate services and supervision by Probation, rather than to adult court. However, implementation ahead of schedule has put additional pressure on the juvenile budget for services, making it all the more necessary to have adequate funding for the biennium.

It should also be noted that Probation is serving more juveniles than originally projected. As stated in the letter, after only half of this fiscal year Probation has served almost 500 youth, or 32%, more than it projected for the entire fiscal year.

All of these factors have combined to produce expenditures higher than projections. Many of the factors are beyond Probation's control, such as the lack of Federal Funds. Despite these challenges, Probation has made progress. For example, the number of youth at the YRTC's has decreased significantly and the number of youth in out-of-home care has been reduced from 69% to 22%. All of this makes funding this deficit request essential to achieving the Legislature's long-term goals for juvenile justice reform.

How does this affect juvenile service funding for the next biennium? At this point, we cannot assume that the factors that caused the deficit will change in the next biennium. Therefore, I am requesting that the Committee's final recommendation for Program 436 include an additional \$11.5 million for FY15-16 and \$12.1 million for FY16-17. The increase each year is based on the assumption that rates for services will increase.

To conclude, as I stated in my opening, the responsibilities of the judicial branch have grown tremendously in recent years due to legislation affecting vulnerable adults, adult probationers and juveniles. The growth will continue as a result of the justice reinvestment initiative. Nobody wants to see any of these initiatives fail.

It is vital that the judicial branch be adequately funded and given sufficient resources to fulfill these new duties, both now and in the future.

I thank the Committee for the support given to the judicial branch in recent years, and I look forward to continued collaboration and support from the Committee.

Thank you for this opportunity to present our requests. I will answer any questions you may have.